

**Remarks**

Claims 1, 3-8, and 14-22 remain for consideration in this application. For the reasons set forth in detail below, Applicant respectfully submits that the claims are allowable over the cited references.

**Rejections under 35 U.S.C. §103(a)**

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art references must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination, and the reasonable expectation of success, must both be found in the prior art, not in Applicant's disclosure. See MPEP §2143. See also *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1348 (Fed. Cir. 1991). Applicant respectfully submits that the Examiner has not met any of the basic criteria for establishing a *prima facie* case of obviousness.

Claims 1, 7-8, and 22

Claims 1, 7-8, and 22 were rejected under 35 U.S.C. §103(a) as being unpatentable over O'Malley et al. ("O'Malley") (U.S. Patent No. 2,886,002) in view of Bartis (U.S. Patent No. 4,815,621). Applicant submits that the suggested combination is improper.

O'Malley discloses a livestock feeder/storage bin capable of handling liquid and non-liquid feed. See *O'Malley* col. 1, lines 1-4. O'Malley does not disclose a feed hopper having a filling end and a feeding end, wherein the filling end has a cover having

an access door with a hinged lid for opening and closing off the opening of the access door, the hinged lid having at least one recess to enable the hinged lid to be breathable, as is recited in Applicant's claim 1. Although O'Malley discloses closure caps, these caps are not lids and are not breathable. The closure caps have handles and are fitted with a dependent skirt "so as to have a neat, tightly fitting closure for the feeder." See O'Malley col. 2, lines 35-37; col. 3, lines 14-19. Applicant submits that the O'Malley reference in fact *teaches away* from a breathable lid by indicating the desirability of a tight fitting lid.

Bartis teaches an above ground container for storing waste liquids. See *Bartis* col. 1, lines 5-6. The container has a primary tank for holding liquid, a secondary tank substantially surrounding the primary tank for containing the liquid in the event of a failure of the primary tank, a removable cover and a sealable inlet box through which the liquid is introduced. The inlet box houses a screen for removing debris from liquid being introduced into the tank and vents for permitting vapors to escape into the atmosphere. See *Bartis* col. 2, lines 15-18; Fig. 2.

The combination of O'Malley and Bartis does not provide an adequate basis for rejection under 35 U.S.C. §103(a). First, there is no motivation for one of ordinary skill in the art to combine the teachings of these references. The Examiner simply states that because the cited references supposedly teach the limitations found in the present device, "one having ordinary skill in the art would have found it obvious to modify O'Malley in view of Bartis." See First Office Action pg. 5, lines 4-6. However, without more, the Examiner's reasoning is not sufficient to establish obviousness. A statement that modifications of the prior art to meet the claimed invention would have been "well

*within the ordinary skill of the art at the time the claimed invention was made*” because the references relied upon teach all aspects of the claimed invention is not sufficient to establish a prima facie case of obviousness “*without some objective reason to combine the teachings of the references.*” See MPEP §2143.01. See also *Ex Parte Levengood*, 28 U.S.P.Q.2d 1300 (Bd. Pat. App. & Inter. 1993). The Examiner has not produced the required objective evidence that would demonstrate why the cited references should be combined. There is absolutely no suggestion, explicit or implicit, found in either reference to combine the teachings of the references. The Examiner is requested to furnish specific evidence and explanation for the motivation or suggestion to combine the elements thus taught to achieve the subject matter of the present invention. In the alternative, the Examiner is requested to withdraw the rejections based on 35 U.S.C. §103(a).

Second, the proposed modification would render the invention of O'Malley unsatisfactory for its intended purpose. If a proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. See MPEP §2143.01. See also *In re Gordon*, 733 F.2d 900 (Fed. Cir. 1984). The access door of O'Malley, the primary reference, is meant to allow feed to freely flow into the hopper. The Bartis reference, however, teaches an inlet box including “a screen for removing debris from liquid as it is being introduced.” See Bartis col. 2, lines 15-17; Fig. 2. Clearly, the inlet box of Bartis would prevent, rather than allow, feed to flow into the hopper of O'Malley. Such a modification of O'Malley would only lead to a clogged and inoperable device. As such, there is no suggestion or motivation to combine O'Malley with Bartis. Moreover,

there is no reasonable expectation of success in combining O'Malley with Bartis because the filtering function of the Bartis inlet box would inhibit operation of the O'Malley feeder. As such, Applicant submits that the rejection is improper.

Third, O'Malley in combination with Bartis does not teach all of the claim limitations of the present invention. To establish *prima facie* obviousness of a claimed invention, all claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981 (CCPA 1974). The Examiner relies on Bartis to teach a breathable lid. However, Bartis recites "to permit the inlet box (18) to be *sealed* and locked and thereby prevent unauthorized use and vandalism, an oversize lid (68) is hinged to the back wall of the box." See Bartis col. 4, lines 25-28. Bartis teaches that vapors may vent into the atmosphere through the plurality of apertures (56) only when the lid is in the open position. Applicant respectfully submits that the Bartis lid is not breathable as the Examiner has asserted. As such, the combination of references does not recite all the claim limitations of the present invention.

Finally, Bartis should not be combined with O'Malley to establish obviousness because Bartis is a non-analogous reference. "In order to rely on a reference as a basis for rejection of an Applicant's invention, the reference must either be in the field of Applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned." *In re Oetiker*, 977 F.2d 1443, 1446 (Fed. Cir. 1992). "A reference is reasonably pertinent if, even though it may be in a different field from that of the inventor's endeavor, it is one which, because of the matter with which it deals, *logically would have commended itself to an inventor's attention in considering his problem.*" *Wang Laboratories Inc. v. Toshiba Corp.*, 993 F.2d 858 (Fed. Cir. 1993).

The hazardous-material storage tank of Bartis is neither in Applicant's field of endeavor or reasonably pertinent to the problem at hand. As such, there is no logical reason as to why an inventor would consult a hazardous-material storage tank when constructing an animal feeder. In addition, Applicant's present invention is in class 119/1 (Animal Husbandry), while Bartis is in class 220/1 (Receptacles). The Patent Office Classification of references is evidence of non-analogy. See MPEP §2141.01(a). See also *In re Clay*, 966 F.2d 656 (Fed. Cir. 1992). Clearly, such classification embodies the PTO's own idea that these devices are not reasonably pertinent to one another. Because the Bartis reference is a non-analogous reference, it cannot be used to establish obviousness under 35 U.S.C. §103(a).

For the reasons stated above, Applicant respectfully submits that the O'Malley-Bartis combination is both inappropriate and inadequate to establish obviousness. Applicant respectfully requests that the Examiner withdraw the rejections under §103 and allow claims 1, 7-8 and 22.

### Claim 3

Claim 3 was rejected based on O'Malley in view of Bartis and further in view of Smeester (U.S. Patent No. 5,740,757). The Examiner seeks to combine O'Malley and Bartis with Smeester to make up the void in the O'Malley and Bartis references with respect to a protective cage surrounding the feeding end of the hopper to arrive at Applicant's claim 3. For the reasons set forth above, Applicant respectfully submits that the O'Malley-Bartis combination is improper. Further, Applicant submits that it is improper to combine these references with Smeester.

The Examiner has failed to provide any reasoning or basis as to why one of ordinary skill would have the motivation to combine the teachings of these references. In addition, the references do not expressly or implicitly give this motivation. As such, Applicant respectfully requests that the Examiner withdraw the rejection and allow claim 3.

#### Claims 4 & 5

Claims 4 and 5 were rejected based on O'Malley in view of Bartis and further in view of Dubbert et al. ("Dubbert") (U.S. Patent No. 5,339,996). The Examiner seeks to combine O'Malley and Bartis with Dubbert to make up the void in the O'Malley and Bartis references with respect to a ladder and a platform to arrive at Applicant's claims 4 and 5. For the reasons set forth above, Applicant respectfully submits that the O'Malley-Bartis combination is improper. Further, Applicant submits that it is improper to combine these references with Dubbert.

The Dubbert reference is drawn to a silo system for delivering dry mortar blends to a batch mixer. Telescopic leg elements are suitably reinforced and mounted to the silo to provide reinforcement. A collapsible ladder is attached to one of the telescopic leg elements and a platform is attached to the silo sidewall. See Dubbert Abstract. There is no reasonable expectation of success in combining the cited references. O'Malley discloses a feeder supported by leg frames that are attached to a skid and pulled like a sled. The Dubbert silo is based on a plurality of collapsible leg supports where the ladder may be attached and is collapsible also. In addition, Dubbert discloses only a collapsible ladder made of several pieces whereas Applicant's claim 4 is directed towards a "one piece" ladder. Applicant submits that there is no motivation

to combine or reasonable expectation of success in combining O'Malley and Bartis and Dubbert. Also, the references, even if combined, do not teach all the claim limitations as recited in Applicant's claims. Applicant submits that the combination of these references is improper and respectfully requests that the Examiner withdraw the rejection and allow claims 4 and 5.

#### Claim 6

Claim 6 was rejected based on O'Malley in view of Bartis and further in view of Hill et al. ("Hill") (U.S. Patent No. 6,073,587). The Examiner seeks to further combine O'Malley and Bartis with Hill in order to arrive at Applicant's claim limitation that the feeder be constructed of plate steel. For the reasons set forth above, Applicant respectfully submits that the O'Malley-Bartis combination is improper. The further combination of these references with Hill is also improper.

The Hill reference teaches a modular animal shelter that is composed of a roof and side rail panels. "Thin plate steel" is used in Hill because it is sturdy and easily transportable, see Hill col. 4, lines 22-32, but not because it is weather resistant as the Examiner asserts. One of ordinary skill in the art would know that thin plate steel is not weather resistant and hence, the shelter in Hill required a covering as disclosed in Hill in figs. 3 and 4. There is no motivation to combine or reasonable expectation of success in combining O'Malley and Bartis with Hill to arrive at Applicant's claim 6. Applicant submits that the combination of these references is improper and requests that the Examiner withdraw the rejection and allow claim 6.

Claims 14-15 and 20-21

Applicant's claims 14-15 and 20-21 were rejected under 35 U.S.C. §103(a) as obvious in view of O'Malley. For the reasons set forth above, rejection of Applicant's claim using the O'Malley reference is improper. Regarding claim 14 (of which claims 15, 20 and 21 depend), Examiner admits that O'Malley does not teach a one-piece wildlife feeder, yet alleges that it would have been obvious to permanently attach the pieces of the feeder because, according to the Examiner, forming in one piece an article formerly of two pieces involves only routine skill in the art. The Federal Circuit has made it clear that it is inappropriate to base an obviousness rejection on structural difference alone. See, *Carl Shenck, A.G. v. Norton Corp.*, 713 F.2d 782, 785 (Fed. Cir. 1983) (rejecting argument that an invention was obvious based on that inventor had made integral what had earlier been made from four bolted pieces. "That effort is *not proper* under the statute which requires that an invention be considered as a whole." *Id.* Emphasis added). Applicant respectfully submits that the rejection of claim 14 and dependent claims 15, 20, and 21 is inappropriate, and requests that the rejection be withdrawn.

Claims 16-19

Claims 16-19 were rejected over O'Malley In view of Smeester (claim 16), in view of Dubbert (claims 17-18) and in view of Hill (claim 19). Applicant submits that a "one-piece" feeder is not taught in O'Malley and the Examiner has failed to provide any reasoning or basis as to why one of ordinary skill would have the motivation to combine the teachings of these references. In addition, the references do not expressly or



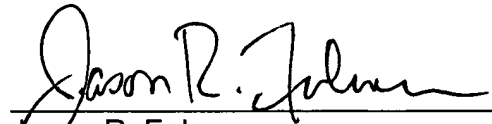
implicitly give this motivation. As such, Applicant respectfully requests that the Examiner withdraw the rejection and allow claims 16-19.

### Conclusion

This Response does not increase the number of independent claims, does not increase the total number of claims, and does not present any multiple independent claims and as such, it is believed no fee is due.

In light of the above remarks, Applicant respectfully requests that the Examiner withdraw the rejections under 35 U.S.C. §103(a), and allow claims 1, 3-8, and 14-22.

Respectfully submitted,



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